

15A Am. Jur. 2d Clerks of Court § 52

American Jurisprudence, Second Edition | May 2021 Update

Clerks of Court

Lonnie E. Griffith, Jr., J.D.

V. Powers and Duties

C. Particular Powers and Duties

3. Custody and Care of Funds

§ 52. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  70

Forms

Forms relating to deposits, generally, see Am. Jur. Pleading and Practice Forms—Clerks of Court [\[Westlaw® Search Query\]](#)

A clerk of a court generally receives money in an official capacity and only as authorized by statute,¹ and may be liable for funds received and interest on such funds.² The clerk holds funds paid into court as a bailee,³ or trustee,⁴ under a duty as a fiduciary of the court.⁵ When the clerk receives a fund in an official capacity, the clerk's possession is that of the court⁶ and is subject to control by the court.⁷

A clerk of court is authorized by statute to collect fees,⁸ receive cash deposits in lieu of bail or recognizance,⁹ and receive payments into the court in discharge of judgments and liens.¹⁰

A clerk of court must keep a complete and accurate record of all monetary transactions of the clerk's office, and the unauthorized removal or personal use of funds deposited in the clerk's office is impermissible.¹¹

In the absence of a statute requiring it, the clerk of court has no obligation to invest any custodial funds in interest-bearing accounts or securities.¹²

Observation:

A clerk could not be prohibited from investigating county funds that were not placed in the clerk's custody under the clerk's responsibility as the custodian of all county funds.¹³

CUMULATIVE SUPPLEMENT

Cases:

Clerk of circuit court was required to comply with direction of board of county commissioners regarding investment of county surplus funds, although clerk of circuit court was custodian of all surplus funds of county, clerk was not unit of local government authorized to have investment policy and board, as county's governing body, had authority to adopt investment policy for county surplus funds. [Fla. Const. art. 8, § 1\(e\)](#); [Fla. Stat. Ann. §§ 28.33, 218.403\(6\), 218.403\(8\), 218.415](#). [Maloy v. Seminole County](#), 264 So. 3d 370 (Fla. 5th DCA 2019).

Circuit court clerk lacked authority to impose fines, including \$20 for victims of violent crime, \$50 as a court-systems assessment, \$2 for Crime Stoppers, \$3.80 as a drug court assessment, and \$15 for State Police operations, on defendant convicted of domestic battery; the purported fines were void, as the imposition of fines was exclusively a judicial act and because circuit clerk was not a judge. [People v. Lewis](#), 421 Ill. Dec. 662, 100 N.E.3d 679 (App. Ct. 4th Dist. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Board of County Com'rs of Sedgwick County v. Noone](#), 235 Kan. 777, 682 P.2d 1303 (1984).
- 2 [§§ 61 to 63](#).
- 3 [Puckett v. Chambers](#), 66 Ga. App. 513, 18 S.E.2d 20 (1941), judgment aff'd, 194 Ga. 401, 21 S.E.2d 713 (1942).
- 4 [Webber v. City of Scottsbluff](#), 155 Neb. 48, 50 N.W.2d 533 (1951).
- 5 [Warren v. Scott](#), 845 S.W.2d 780 (Tenn. Ct. App. 1992).
- 6 [The clerk of court was charged with the duty of auditing accounts of fiduciaries. In re Edwards](#), 691 S.E.2d 766 (N.C. Ct. App. 2010).
- 7 [First Nat. Bank of Cadiz v. Bowers](#), 104 Ohio App. 495, 5 Ohio Op. 2d 232, 150 N.E.2d 459 (7th Dist. Harrison County 1957).
- 8 [Landau v. Vallen](#), 895 F.2d 888 (2d Cir. 1990).
- 9 [§§ 35 to 39](#).
- 10 [District 65, Distributive, Processing and Office Workers Union of N. Y. and N. J. v. McKague](#), 115 F. Supp. 227 (W.D. Pa. 1953).

- 10 [In re Marriage of Hollingsworth](#), 671 N.E.2d 165 (Ind. Ct. App. 1996); [Stover v. County of Lancaster](#), 271 Neb. 107, 710 N.W.2d 84 (2006).
- 11 [State v. Hampton](#), 653 S.W.2d 191 (Mo. 1983).
- 12 [Madlener v. Finley](#), 128 Ill. 2d 147, 131 Ill. Dec. 145, 538 N.E.2d 520 (1989); [Potter v. Wayne County](#), 46 Mich. App. 174, 207 N.W.2d 448 (1973).
- 13 [Brock v. Board of County Com'rs of Collier County](#), 21 So. 3d 844 (Fla. Dist. Ct. App. 2d Dist. 2009), review granted, 26 So. 3d 581 (Fla. 2010) and review dismissed, 48 So. 3d 810 (Fla. 2010).

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Clerks of Court

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V. Powers and Duties

C. Particular Powers and Duties

3. Custody and Care of Funds

§ 53. Attorneys' funds or liens

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On receipt of funds in payment of a judgment, to which an attorney's lien has attached, the clerk of court has a duty to retain that portion of the deposited funds attached.¹ A clerk of a court holding money in satisfaction of a judgment must await the exhaustion of the attorney's period for filing a lien or secure a release from the attorney of record prior to releasing the money.²

Observation:

Law firms commonly maintain an account with the clerk and charge fees to that account. A charge to a firm's account at the time of filing is equivalent to depositing a fee.³

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Footnotes

¹ [Stover v. County of Lancaster](#), 271 Neb. 107, 710 N.W.2d 84 (2006).

- 2 [In re Marriage of Hollingsworth, 671 N.E.2d 165 \(Ind. Ct. App. 1996\).](#)
- 3 [Watertown Co-op. Elevator Ass'n v. South Dakota Dept. of Revenue, 2001 SD 56, 627 N.W.2d 167 \(S.D. 2001\).](#)

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Clerks of Court

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V. Powers and Duties

C. Particular Powers and Duties

3. Custody and Care of Funds

§ 54. Federal court clerks

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Forms

Forms relating to deposits in federal court, generally, see Am. Jur. Pleading and Practice Forms—Clerks of Court [[Westlaw® Search Query](#)]

Federal statutes provide that all moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court must be deposited with the Treasurer of the United States or in a designated depository, in the name and to the credit of the court,¹ and that no withdrawal can be made except by the order of the court.²

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Footnotes

¹ 28 U.S.C.A. § 2041.

² 28 U.S.C.A. § 2042.

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